

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION**

CROSS KEYS BANK

CIVIL ACTION NO. 3:20-cv-01511

VERSUS

JUDGE TERRY A. DOUGHTY

RONNIE WARD, ET AL.

MAG. JUDGE KAREN L. HAYES

MEMORANDUM RULING

Pending before this Court is a Motion for Extension of Time for Filing Statement of Issues and Designation of Record for Appeal [Doc. No 7] (“Motion for Extension”) filed by Ronnie D. Ward and Sharon D. Ward (“Wards”), and a Motion to Dismiss Appeal [Doc. No. 11], filed by Cross Keys Bank (“Cross Keys”). Oppositions have been filed to said motions [Doc. Nos. 11 and 14] and a Reply [Doc. No. 15] was filed by Cross Keys in support of its Motion to Dismiss Appeal.

For the reasons set forth herein, the Wards’ Motion for Extension [Doc. No. 7] is GRANTED, and Cross Keys’ Motion to dismiss Appeal [Doc. No. 11] is DENIED.

A. FACTS

On November 24, 2020, the Wards timely filed a Notice of Appeal [Doc. No.1], seeking to appeal the denial of a Motion to Remand [Doc. No. 50], a Motion to Abstain [Doc. No. 49], and a Motion for New Trial [Doc. No. 97] in the bankruptcy proceeding styled *In Re: Karcredit, LLC*, Case No. 20-30681, United States Bankruptcy Court, Western District of Louisiana.

Although the Notice of Appeal was timely filed, a designation of the record and statement of the issues to be presented on appeal were not filed within 14 days of the Notice of Appeal in accordance with Bankruptcy Rule 8009.

After the 14 days had expired, on December 9, 2020, the Clerk of the Bankruptcy Court filed a Notice of Failure to Perfect Bankruptcy Appeal [Doc. No. 2]. On December 9, 2020, the

Wards filed a Statement of Issues for Appeal [Doc. No. 3] and on December 11, 2020, the Wards filed a Bankruptcy Designation of Record [Doc. No. 5]. On December 17, 2020, the Wards filed the pending Motion for Extension [Doc. No. 7]. On December 23, 2020, Cross Keys filed the pending Motion to Dismiss Appeal [Doc. No. 11].

B. LAW AND ANALYSIS

There is no dispute that the Wards' Notice of Appeal was timely filed. There is also no dispute that the Wards Statement of Issues for Appeal and Designation of Record were not.

1. Jurisdiction

Cross Keys first maintains there is no jurisdiction, citing *In the Matter of Iris Berman-Smith*, 737 F.3d 997 (5th Cir. 2013). This case is distinguishable.

In *Berman-Smith*, the Notice of Appeal was not timely filed, which resulted in dismissal for lack of jurisdiction. The jurisdictional focus was on the failure to file the Notice of Appeal, not the issues for appeal or the designation of record. Therefore, since the Notice of Appeal was timely filed in this case, this Court has jurisdiction.

2. Should the Appeal be Dismissed?

Since this Court has jurisdiction, the next issue is whether the failure of the Wards to timely file a designation of record and issues for appeal should result in dismissal of their appeal. Both Cross Keys and the Wards make many arguments as to this issue. This Court does not believe it is necessary to specifically address those arguments.

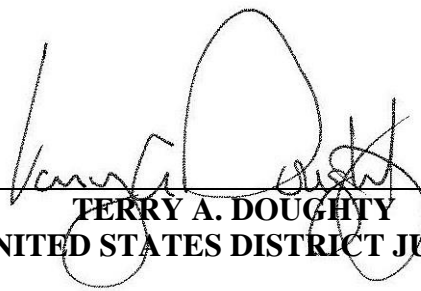
There is simply no prejudice to Cross Keys here. The timely Notice of Appeal gave Cross Keys notice of the appeal on November 24, 2020. Prior to any response was required by Cross Keys to the appeal, Cross Keys had knowledge of the issues for appeal and the portion of the record designated by the Wards.

Obstinately dilatory conduct may result in dismissal of an appeal. *In re CPDC, Inc.*, 221 F3d 693 (5th Cir. 2000). However, this Court does not feel it necessary to examine that issue at this point in the litigation.

C. CONCLUSION

For the reasons set forth herein, the Ward's Motion for Extension [Doc. No. 7] is GRANTED and Cross Keys' Motion to Dismiss Appeal [Doc. No. 11] is DENIED.

Monroe, Louisiana, this 11th day of January, 2021.



TERRY A. DOUGHTY
UNITED STATES DISTRICT JUDGE

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